

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	October 1, 2018
Time of Incident:	3:12 PM
Location of Incident:	██
Date of COPA Notification:	October 4, 2019
Time of COPA Notification:	1:47 PM

On October 1, 2018, Officers ██████████ and ██████████ responded to a call at ██████████. The officers entered ██████████, and ultimately tased and arrested ██████████. Both officers received allegations for entering the apartment, detaining ██████████, handcuffing ██████████, arresting ██████████, and giving ██████████ conflicting instructions. Officer ██████████ also received allegations related to his use of force and Lieutenant ██████████ received an allegation for approving Officer ██████████ Tactical Response Report (TRR). COPA’s findings are discussed in the Analysis portion of this report.

**II. INVOLVED PARTIES**

Involved Officer #1:	██████████ Star # ██████████ Employee ID # ██████████ Date of Appointment: ██████████ 2006, Police Officer, █ District, Date of Birth: ██████████ 1972, Male, Hispanic
Involved Officer #2:	██████████ Star # ██████████ Employee ID # ██████████ Date of Appointment: ██████████ 2012, Police Officer, █ District, Date of Birth: ██████████ 1974, Female, Hispanic
Involved Officer #3:	██████████ Star # ██████████ Employee ID # ██████████ Date of Appointment: ██████████ 1999, Lieutenant of Police, █ District, Date of Birth: ██████████ 1975, Male, White
Involved Individual #1:	██████████ Date of Birth: ██████████ 1992, Male, Black
Involved Individual #2:	██████████ Date of Birth: ██████████ 1992, Female, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
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<p>Officer [REDACTED]</p>	<ol style="list-style-type: none"> <li>1. Entered Apartment [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>2. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>3. Prevented [REDACTED] from complying with your order to put his hands behind his back, in violation of Rule 2 and Rule 11.</li> <li>4. Handcuffed [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>5. Tased [REDACTED] without justification, in violation of Rule 6 and Rule 9.</li> <li>6. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>7. Failed to specify the details regarding the use of arm bar(s) on [REDACTED] in your Tactical Response Report (TRR), in violation of Rule 2 and Rule 6.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p> <p>Sustained</p> <p>Exonerated</p> <p>Not Sustained</p>
<p>Officer [REDACTED]</p>	<ol style="list-style-type: none"> <li>1. Entered Apartment [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>2. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>3. Prevented [REDACTED] from complying with your order to put his hands behind his back, in violation of Rule 2 and Rule 11.</li> <li>4. Handcuffed [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> <li>5. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p> <p>Exonerated</p>
<p>Lieutenant [REDACTED]</p>	<ol style="list-style-type: none"> <li>1. Determined the Tactical Response Report (TRR) submitted by Officer [REDACTED] (Star # [REDACTED] for RD # [REDACTED] was in compliance with Department policy and directives, in violation of Rule 3, Rule 6, and Rule 22.</li> </ol>	<p>Not Sustained</p>

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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1. **Rule 2:** Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
  2. **Rule 3:** Prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.
  3. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
  4. **Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
  5. **Rule 11:** Prohibits incompetency or inefficiency in the performance of duty.
  6. **Rule 22:** Prohibits failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.
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##### General Orders

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1. **G03-02:** Use of Force.
  2. **G03-02-01:** Force Options.
  3. **G03-02-02:** Incidents Requiring the Completion of a Tactical Response Report.
  4. **G03-02-04:** Taser Use Incidents.
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##### Federal Laws

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1. **Fourth Amendment to the United States Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

#### V. INVESTIGATION<sup>1</sup>

##### a. Interviews

Attempts to interview ██████████ and ██████████ were met with negative results.<sup>23</sup>

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<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>2</sup> Att. 37

<sup>3</sup> COPA initiated this complaint after receiving a taser notification from CPD.

COPA interviewed **Officer [REDACTED]** on April 24, 2019.<sup>4</sup> On October 1, 2018, Officer [REDACTED] and Officer [REDACTED] responded to a call at [REDACTED] of “a male beating a female on the street.”<sup>5</sup> When the officer arrived, the 911 caller<sup>6</sup> showed the officers which building to enter. Officer [REDACTED] clarified that they spoke to the caller when they arrived on scene, while still inside their vehicle. The officers entered the building and [REDACTED] opened her unit’s front door. [REDACTED] told the officers that [REDACTED] was not present, but the officers entered the apartment due to “the visible signs of injury,” which included a red face and “black left eye.”<sup>7</sup> Officer [REDACTED] determined the injuries were related to the 911 call because it was a domestic battery call, and a downstairs neighbor told the officers that [REDACTED] and [REDACTED] frequently fought.

Once the officers entered, [REDACTED] was found hiding in the bathroom and his clothing matched the description given by the 911 caller. The officers detained [REDACTED] to speak to him, but he refused. [REDACTED] was handcuffed for his safety and for officer safety. The officers decided to arrest [REDACTED] once he began resisting. Officer [REDACTED] elaborated that [REDACTED] was “pulling away, stiffening up, not listening to verbal commands.”<sup>8</sup> When asked why she and her partner were holding on to each of [REDACTED] wrists while Officer [REDACTED] told [REDACTED] to put his hands behind his back, Officer [REDACTED] related she was, “trying to help him [...] he was refusing to put his other hand behind his back, so I was assisting him.”<sup>9</sup> When asked how [REDACTED] could have put his hands behind his back when the officers were holding his wrists, Officer [REDACTED] responded, “because he was refusing to, he wasn’t even trying to put his hands behind his back.”<sup>10</sup> Officer [REDACTED] asserted that [REDACTED] was pulling away from the officers instead of putting his hands behind his back. Officer [REDACTED] related [REDACTED] could have put his hands behind his back instead of pulling away, and he was also pushing Officer [REDACTED] away. Per Officer [REDACTED] was an active resistor because he “pulling away, stiffening up, [...] he was also hanging onto the wall.”<sup>11</sup> Officer [REDACTED] asserted [REDACTED] was an active resistor at the moment he was tased and she believed the tasing was justified.

COPA interviewed **Officer [REDACTED]** on April 24, 2019.<sup>12</sup> Officer [REDACTED] stated that he spoke with a lieutenant from the Force Review Unit at the CPD academy, watched Body Worn Camera (BWC) video, and reviewed directives with the lieutenant.

Per Officer [REDACTED] on October 1, 2018, he was partnered with Officer [REDACTED] when they responded to a domestic battery call at [REDACTED]. An anonymous caller had reported “there was a male beating a female outside.”<sup>13</sup> The officers spoke to a female neighbor when they arrived. The neighbor indicated which house the officers should go to, but she refused to provide her name. This conversation was not on BWC because Officer [REDACTED] had not yet turned on his BWC. A male neighbor let the officers into the building and told them which unit to enter. [REDACTED]

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<sup>4</sup> Att. 21

<sup>5</sup> Approximately 5:49 minute mark of Att. 21.

<sup>6</sup> The caller wished to remain anonymous and refused to provide her name to responding officers

<sup>7</sup> Approximately 7:27 minute mark of Att. 21.

<sup>8</sup> Approximately 8:40 minute mark of Att. 21.

<sup>9</sup> Approximately 9:03 minute mark of Att. 21.

<sup>10</sup> Approximately 9:15 minute mark of Att. 21.

<sup>11</sup> Approximately 9:45 minute mark of Att. 21.

<sup>12</sup> Att. 26

<sup>13</sup> Approximately 8:09 minute mark of Att. 26.

opened her apartment door, and Officer ██████ entered because he was concerned ██████ would be further injured by ██████

Officer ██████ searched the home and found ██████ hiding in the bathroom. Per Officer ██████ clothing matched the description provided to 911 and since ██████ was hiding, the officers assumed he was the assailant. Officer ██████ stated he used an armbar on ██████ in an attempt to handcuff him but forgot to specify this use of force on the Tactical Response Report (TRR). The officers detained ██████ in order to remove and speak with him. Officer ██████ did not want to leave ██████ in the home if he was beating ██████ was handcuffed for safety reasons, in case ██████ tried to fight the officers. The officers decided to arrest ██████ when he resisted, and because the officers saw marks on ██████ face. Officer ██████ determined that ██████ injuries were caused by ██████ because her injuries seemed fresh and ██████ made a comment to the effect that she was used to ██████ behavior.

When asked how ██████ was supposed to follow Officer ██████ instructions to put his hands behind his back when the officers were holding ██████ wrists, Officer ██████ responded that ██████ could have stopped stiffening and bent his arms behind his back. Officer ██████ denied that the officers kept ██████ from putting his hands behind his back.

Officer ██████ tased ██████ because ██████ was an active resister by pushing and standing up and down. Officer ██████ stated that he “didn’t know how long it was gonna be before [█████] just comes up again and tries to fight us or do something like that.”<sup>14</sup> Officer ██████ denied that ██████ threatened or tried to fight the officers. Officer ██████ specified that ██████ stiffened, ignored orders, and would not put his hands behind his back. Officer ██████ related that ██████ was a passive resister when he tased ██████ After speaking with his attorney off record, Officer ██████ then related that ██████ was an active resister when he was tased because ██████ was an active resister at first and ██████ would not allow to officers to cuff him.

COPA interviewed Lieutenant ██████ on April 25, 2019.<sup>15</sup> Lieutenant ██████ related that he was not present when ██████ was tased, nor did he respond to the scene. Lieutenant ██████ first encountered ██████ to conduct an interview in a processing room at the ██████ District. Lieutenant ██████ did not have any independent recollection of his conversation with ██████ and stood by his statement in the TRR.<sup>16</sup> Lieutenant ██████ watched Officer ██████ BWC and approved the officer’s TRR. Lieutenant ██████ related that he believed Officer ██████ use of a taser was within policy “based on the totality of the circumstances.”<sup>17</sup> Lieutenant ██████ elaborated that, as seen in BWC, ██████ was an active resister at several points and it was in the officers’ “best interest to deploy the taser to prevent injury, further injury or any injury, to themselves or to Mr. ██████”<sup>18</sup> After speaking with his attorney, Lieutenant ██████ related that, “Throughout the whole entire incident [█████] goes from [...] active to passive. So, [...] in my interpretation, he’s an active resister the whole time through. [█████] takes breaks, but when you’re in that situation, you don’t

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<sup>14</sup> Approximately 14:20 minute mark of Att. 26.

<sup>15</sup> Att. 31

<sup>16</sup> Att. 8

<sup>17</sup> Approximately 9:32 minute mark of Att. 8.

<sup>18</sup> Approximately 9:49 minute mark of Att. 8.

have the hindsight of saying ‘I can take a break [...]’ At that particular moment, he had a handcuff on, which if he would have engaged officers again and flailed his arms [...] would definitely cause major injuries. So, I would classify [REDACTED] as an active resister.”<sup>19</sup> Lieutenant [REDACTED] related that Officer [REDACTED] made a mistake with the mechanics of using the taser and he advised Officer [REDACTED] to review how to use a taser. Lieutenant [REDACTED] related that he reviewed orders with Officer [REDACTED]. Lieutenant [REDACTED] provided COPA with a copy of Officer [REDACTED] training record stemming from this incident.<sup>20</sup>

### b. Digital Evidence

The following **Body Worn Camera** (BWC) footage was obtained in relation to this incident.<sup>21</sup>

#### *Officer [REDACTED]*

Officer [REDACTED] BWC initiated at approximately 3:02 PM, while the officer was inside a squad car. Officer [REDACTED] approached an apartment building and was let in by an unidentified male. This male indicated to Officer [REDACTED] that he heard arguing upstairs. The officers proceeded upstairs, knocked on the door to Apt. [REDACTED] and [REDACTED] answered (while wearing a pink hoodie). [REDACTED] told the officers “he” was not present, and the officers could not enter. At about 3:05 PM, Officer [REDACTED] responded, “Ma’am you’re getting beat up.” [REDACTED] again said that “he” was not present and the officers could not enter.

Officer [REDACTED] then entered the apartment. Shortly after, he found [REDACTED] in a bathroom. Officer [REDACTED] told [REDACTED] to exit the bathroom and [REDACTED] initially complied. However, after Officer [REDACTED] removed his handcuffs, [REDACTED] began protesting, pulled his arms away, and tried to distance himself from the officer. Officer [REDACTED] performed an armbar on [REDACTED] at approximately 3:05 PM. Officer [REDACTED] got a handcuff on [REDACTED] left wrist. [REDACTED] pulled away from Officer [REDACTED] and was then seen on the ground, continuing to pull away. At about 3:06 PM, Officer [REDACTED] grabbed [REDACTED] right wrist. [REDACTED] was upset, protested the situation, and denied he was abusing [REDACTED]. At approximately 3:07 PM, a scuffle ensued while [REDACTED] was on the ground, Officer [REDACTED] held the cuff attached to [REDACTED] left wrist, and [REDACTED] pulled away (see Photo 1). [REDACTED] then stated that he was not going to leave with the officers. At roughly 3:09 PM, Officer [REDACTED] asked [REDACTED] where her bruise came from and [REDACTED] said it was old. Officer [REDACTED] told [REDACTED] that he was being arrested for domestic battery. At about 3:10 PM, [REDACTED] announced he was waiting for a sergeant to arrive.

At 3:10 PM, Officer [REDACTED] pointed his taser at [REDACTED] and told him to put his hands behind his back. Officer [REDACTED] was holding onto the handcuff attached to [REDACTED] right wrist. Officer [REDACTED] grabbed [REDACTED] right wrist, and [REDACTED] pulled away. Officer [REDACTED] attempted to handcuff [REDACTED] right wrist, but [REDACTED] resisted and she was unsuccessful. Officer [REDACTED] maintained a grip on [REDACTED] left wrist, via the handcuff. At approximately 3:12 PM, [REDACTED] continued pulling away from the officers while seated on the ground. Officer [REDACTED] again attempted

<sup>19</sup> Approximately 10:35 minute mark of Att. 8.

<sup>20</sup> Att. 36

<sup>21</sup> Att. 10

to cuff ██████ again pulled away, but Officer ██████ got a cuff on his right wrist. The officers got ██████ to his feet briefly before he sat himself back down. Officer ██████ said he was going to tase ██████ and Officer ██████ backed away. At roughly 3:13 PM, Officer ██████ told ██████ to put both of his hands behind his back, while maintaining a grip on ██████ left handcuff (see Photo 2). Shortly after, Officer ██████ again grabbed the handcuff attached to ██████ right wrist. At approximately the 13:20 minute mark, Officer ██████ told ██████ that if he did not put his hands behind his back, he was going to be tased, as each officer was holding a handcuff attached to one of ██████ wrists (see photo 3). At roughly 3:13:49 PM, Officer ██████ and asked ██████ to put his hands behind his back, then discharged his taser at ██████ was seated on the ground at the moment he was tased. The officer discharged the second taser at about 3:13:52 PM. ██████ was heard screaming and crying. Officer ██████ again told ██████ to put his hands behind his back. Officer ██████ requested an ambulance at about 3:14 PM. Additional officers began arriving at roughly 3:17 PM. ██████ remained seated on the ground and Officer ██████ continued threatening to tase ██████ if ██████ did not comply with the arrest. ██████ was brought to his feet and escorted outside and at about 3:21 PM.

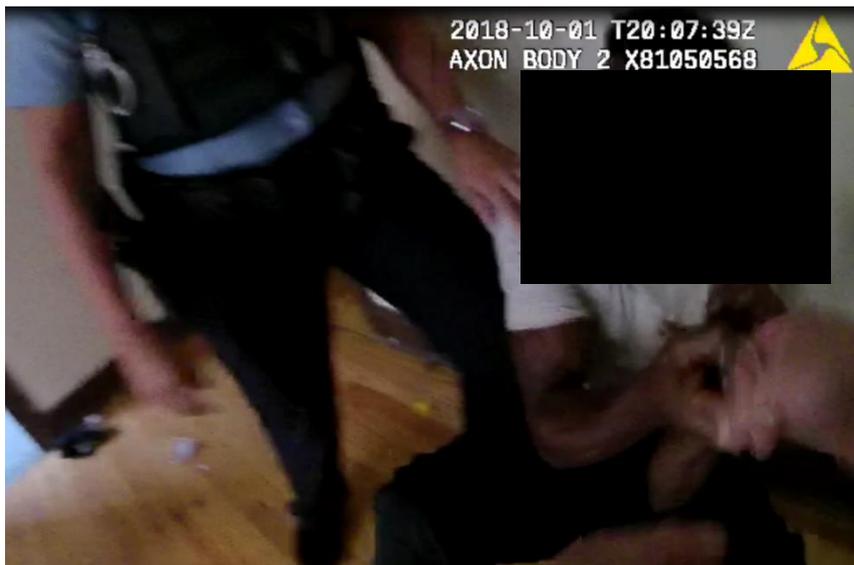


Photo 1

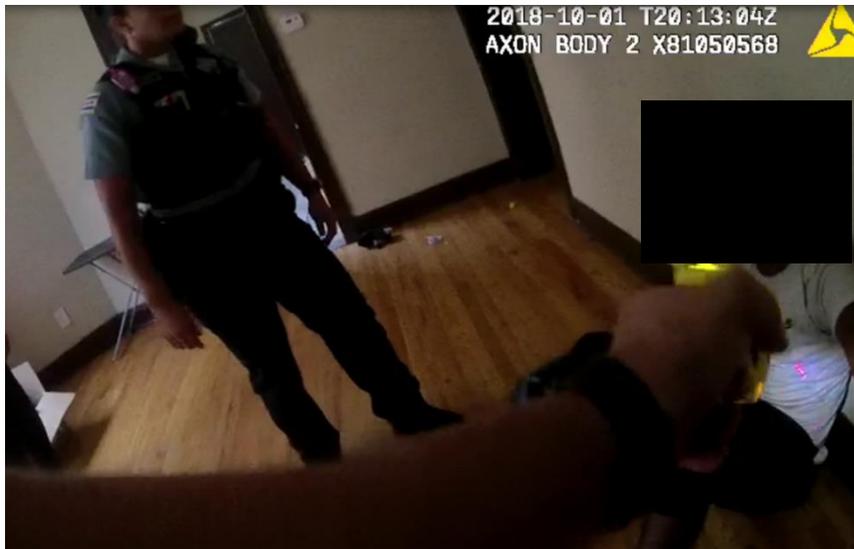


Photo 2



Photo 3

**Officer [REDACTED]**

Officer [REDACTED] BWC initiated at about 3:00 PM, as she was driving a squad car. Officer [REDACTED] spoke with two male neighbors, one of whom let them into the building. Officer [REDACTED] and Officer [REDACTED] knocked on the door for Apt. [REDACTED]. [REDACTED] answered the door, and both officers entered, despite [REDACTED] protests. Officer [REDACTED] had a handcuff on [REDACTED] left wrist and maintained a grip, while Officer [REDACTED] stood on [REDACTED] right side. [REDACTED] had on a white t-shirt and black pants. [REDACTED] tried to pull his left arm from Officer [REDACTED] at approximately 3:05 PM. A scuffle ensued between [REDACTED] and Officer [REDACTED] after [REDACTED] reached for his right pants pocket. [REDACTED] was then on the ground with Officer [REDACTED] still holding onto the handcuff on [REDACTED] left wrist. [REDACTED] and [REDACTED] both denied that [REDACTED] hit her. Officer [REDACTED] continued holding onto the handcuff while [REDACTED] resisted by being dead weight and pulling away. [REDACTED] stated he was not going to leave with the officers and complained the handcuff was affecting his circulation and wrist. At about 3:10 PM, [REDACTED] had his right arm hooked around the door frame,

apparently as leverage to pull away from Officer [REDACTED]. Officer [REDACTED] then attempted to put handcuffs on [REDACTED] right wrist, but he pulled away and defeated the action. At about 3:12 PM, Officer [REDACTED] told [REDACTED] to put his hands behind his back, while holding onto [REDACTED] left handcuff. At approximately 3:12 PM, Officer [REDACTED] put a handcuff on [REDACTED] right wrist. Shortly after, another scuffle ensued that was not clearly depicted on BWC. [REDACTED] was then on his feet but sat back down shortly after.

Officer [REDACTED] maintained his grip on the left handcuff and at about roughly 3:13 PM, the taser laser was seen on [REDACTED] chest. Officer [REDACTED] told [REDACTED] to put his hands behind his back and [REDACTED] put his right hand behind his back. Officer [REDACTED] was still holding the left cuff and told [REDACTED] to put both hands behind his back (see Photo 4). Officer [REDACTED] then grabbed onto the right handcuff.<sup>22</sup> While each officer was holding onto one of the cuffs, Officer [REDACTED] told [REDACTED] to put his hands behind his back (see Photo 5).<sup>23</sup> At about 3:13 PM, Officer [REDACTED] tased [REDACTED] while [REDACTED] was seated on the ground and not resisting or moving (see Photo 6).<sup>24</sup> Officer [REDACTED] discharged the second prong seconds later. A cycling sound was heard shortly after. [REDACTED] appeared to be convulsing after the tasing. Additional officers responded at about 3:17 PM. [REDACTED] was escorted outside at roughly 3:20 PM.



Photo 4

<sup>22</sup> The application of the right handcuff was not visible in Officer [REDACTED] BWC.

<sup>23</sup> Approximately 13:16 minute mark of Officer [REDACTED] BWC.

<sup>24</sup> Approximately 13:30 minute mark of Officer [REDACTED] BWC.



Photo 5



Photo 6

### c. Physical Evidence

**Taser Information** was obtained from Officer [REDACTED] taser deployment on October 1, 2018.<sup>25</sup> The taser was armed at about 2:14 PM, before it was arced then put in safe mode about four seconds later. The taser was armed again at approximately 3:12 PM and returned to safe mode after less than one minute. The taser was then armed for a third time at roughly 3:15 PM. About one minute later, Officer [REDACTED] arced the taser. Cartridges 1 and 2 were deployed at the same time, at approximately 3:16 PM. Cartridge 2 was deployed again roughly 17 seconds later. The taser returned to safe mode at about 3:21 PM.

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<sup>25</sup> Att. 11

#### d. Documentary Evidence

██████████ **Arrest Report** was obtained from October 1, 2018 with RD # ██████████.<sup>26</sup> ██████████ was charged with two misdemeanors: domestic battery – bodily harm and resisting/obstructing a peace officer. ██████████ was provided as ██████████ victim. Officers ██████████ and ██████████ were responding to a call of a domestic battery. The officers spoke with an unidentified female neighbor who had called 911, and she gave a description of ██████████ and ██████████ answered her apartment door and the officers “observed visible signs of physical injuries to the victim’s left eye.” The officers entered and saw ██████████ “hiding in the bathroom.” When the officers tried to detain ██████████ he resisted “by stiffening and pulling away.” The officers told ██████████ to stop resisting, Officer ██████████ tased ██████████ and ██████████ was arrested. ██████████ “refused to sign complaints,” so Officer ██████████ signed complaints “due to visible signs of injury to victim’s left eye and face.” ██████████ was taken to Jackson Park Hospital. ██████████ “refused to have pictures taken by” a CPD Evidence Technician.

An **Original Case Incident Report** was also located for RD # ██████████.<sup>27</sup> After seeing ██████████ and her injuries, Officers ██████████ and ██████████ feared for ██████████ safety and entered her dwelling. The officers told ██████████ to exit the bathroom where he was hiding, but he refused. ██████████ tried to avoid being handcuffed and was told to stop resisting. Officer ██████████ initially arced his taser on accident before deploying both taser cartridges at ██████████

A **Case Supplementary Report** was also found for RD # ██████████ that contained no additional, relevant information.<sup>28</sup>

Officer ██████████ completed a **Tactical Response Report (TRR)** following ██████████ arrest.<sup>29</sup> ██████████ was reported as under the influence of alcohol. ██████████ reportedly did not follow verbal direction, stiffened, pulled away, and refused to be handcuffed. Officer ██████████ responded with member presence, verbal direction, tactical positioning, armbar, emergency handcuffing, and discharge of two taser probes. Officer ██████████ also engaged the arc cycle two times and the spark display one time. The TRR states that “before discharging the taser [Officer ██████████] got confused and pushed the arc button,” before successfully tasing ██████████ twice. Lieutenant ██████████ spoke with ██████████ who told the lieutenant he knew his neighbors had called the police which was why he hid. ██████████ related “that he knew if he left the apartment with the police, that he was going to jail.” ██████████ told Lieutenant ██████████ “he would not comply with the police because he didn’t want to be arrested.” Lieutenant ██████████ determined Officer ██████████ actions were within policy but recommended that Officer ██████████ review Department directives.

The TRR was also submitted to the **CPD Force Review Unit**.<sup>30</sup> Per the review, Officer ██████████ failed to specify when he used an armbar and “Without specificity [...] one cannot determine if/when force was used.” Next, Officer ██████████ reported on his TRR that he arced

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<sup>26</sup> Att. 5

<sup>27</sup> Att. 6

<sup>28</sup> Att. 7

<sup>29</sup> Att. 8

<sup>30</sup> Att. 8

his taser two times and pulled the trigger two times. However, the Taser Download Report related that Officer ██████ “only pressed the arc button one time.” The Taser Download Report also related the trigger was pulled three times but “the first two trigger pulls occurred at the same time, and the member was likely unaware of this. Lastly, review stated that ██████ was a passive resister at the time he was tased “by sitting on the floor and not complying with the officer’s verbal commands [...]” The Force Review Unit recommended additional training for Officer ██████ even though “this incident has already been addressed at the district level by Lieutenant ██████”

**Case Number 18DV ██████** was filed against ██████ in the Cook County Circuit Court on October 2, 2018.<sup>31</sup> ██████ was charged with misdemeanor domestic battery and misdemeanor resisting/obstructing a peace officer. On October 2, 2018, a judgement of nolle prosequi was entered for the domestic battery charge. On April 5, 2019, ██████ pleaded guilty to resisting/obstructing a peace officer. ██████ was sentenced to two days in the Cook County Department of Corrections, with two days of credit for time served.

The following relevant **Office of Emergency Management and Communications (OEMC) Event Query Report** and **Audio Transmission** were identified from October 1, 2018.<sup>32</sup> **Event Number ██████** was initiated at about 2:44 PM, with a call of battery in progress. In 911 audio, an unknown woman stated, “It’s a guy on Eberhart beating on a girl. They, like, at the end of, like, 79<sup>th</sup> and Eberhart. He got on a black jacket and she got on a pink jacket, and he’s sitting here beating on her face.” The woman related she was sitting her car while making the call and she declined to provide her name. Beat ██████ (Officers ██████ and ██████) were dispatched at roughly 2:51 PM and were on scene at approximately 3:04 PM. Beat ██████ requested a sergeant at about 3:11 PM. Additional beats assisted and Beat ██████ returned to the ██████ District at roughly 3:42 PM. At approximately 5:51 PM, Beat ██████ (Officers ██████ and ██████) reported going to the ██████ District with one subject.

## VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

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<sup>31</sup> Att. 38

<sup>32</sup> Atts. 9, 13

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VII. ANALYSIS

**Allegation 3** against **Officer [REDACTED]** and **Officer [REDACTED]** that they prevented **[REDACTED]** from complying with their order to put his hands behind his back, is **Not Sustained**. It is unclear if **[REDACTED]** actively resisted the officers attempts to place him in custody throughout the encounter. While both officers were independently holding each of **[REDACTED]** wrists, suggesting **[REDACTED]** would be unable to comply with their requests; BWC shows that each time the officers attempted to gain control of **[REDACTED]** or cuff **[REDACTED]** he resisted and stiffened to stop the arrest. Additionally, **[REDACTED]** is heard arguing with the officers and saying he would not be arrested. The event involved moments of active struggle and moments of standoff between the officers and **[REDACTED]**. The officers stated that **[REDACTED]** never became limp allowing compliance. It is plausible that the officers were waiting for **[REDACTED]** to comply while staying prepared for more struggle. It is also possible that the officers created tension that did not allow **[REDACTED]** to become compliant. The evidence is unclear if the officers never allowed **[REDACTED]** to become compliant or **[REDACTED]** himself remained stiff and uncompliant. Therefore, this allegation is not sustained.

**Allegation 5** against **Officer [REDACTED]** that he tased **[REDACTED]** without justification, is **Sustained**.

Per CPD General Order G03-02-04, "Department members' use of a Taser must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject. [...] Department members are authorized to use a Taser only for an **active resister** or **assailant**, and only for the purposes of gaining control of and restraining the subject (emphasis in original)."

Per CPD General Order G03-02, Officers are required to employ de-escalation techniques including, "continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety." This policy recommends requesting additional personal and employing time as a tactic for de-escalation.

CPD General Order G03-02-01 relates that, "As the subject offers less resistance, the member will immediately lower the amount or type of force used." Further, this directive states, "When encountering noncompliance to lawful verbal direction, members are not required to

immediately use force [...]” This policy defines a passive resister as “a person who fails to comply (non-movement) with verbal or other direction.” An active resister is defined as, “a person who attempts to create distance between himself or herself and the member’s reach with the intent to avoid physical control and/or defeat the arrest.”

BWC shows ██████ was an active resister at the onset of the encounter. However, when ██████ was tased, he was seated, he was making no efforts to distance himself or defeat arrest, and as such was a passive resister in that moment. The officers did not need to gain control of or restrain ██████ as they had him in cuffs and he was seated on the floor. CPD policy specifically requires officers to change their use of force as the subject changes their resistance. Just because ██████ was an active resister at one point, it does not mean he was an active resister the entire encounter. Next, while ██████ was not following commands, Officer ██████ was not required to use force. ██████ specifically stated that he wanted to talk to a sergeant. The officers could have waited for a sergeant to arrive, and possibly used that time to allow ██████ to calm down. Since Officer ██████ acted outside of CPD policy when tasing ██████ this allegation is Sustained.

Similarly, **Allegation 1** against **Lieutenant ██████** that he determined the Tactical Response Report (TRR) submitted by Officer ██████ (Star # ██████ for RD # ██████ was in compliance with Department policy and directives, is **Not Sustained**. The determination of a use of force incident are nuanced and can at times be difficult to discern. ██████ was an active resister at points during the encounter. However, COPA finds by the preponderance of evidence that ██████ was a passive resister at the time he was tased. COPA’s ability to make that determination comes with the benefit of time and formal interviews with the involved parties. COPA is cognizant that member supervisors are asked to make these determinations quickly and with limited information. Lieutenant ██████ responses during the interview indicate he reviewed the BWC and made an assessment based on what he saw and his understanding of the use of force policy. Despite COPA’s disagreement on the appropriateness of Officer ██████ use of force, there is no evidence that Lieutenant ██████ approved an obviously false TRR, nor is there evidence he did so with an intent to deceive or cover for the officer. COPA simply does not have enough evidence to determine if approving the TRR based in this case was a violation of Department policy. In some cases, where the use of force is so clear that the only conclusion would be the force was out of policy, we may be able to sustain such an allegation. This is not the case.

**Allegation 7** against **Officer ██████** that he failed to specify the details regarding the use of arm bar(s) on ██████ in his Tactical Response Report (TRR), is **Sustained**. By Officer ██████ own admission, he performed an armbar but forgot to detail it in his TRR. Per General Order G03-02-02, officers “are responsible, at all times, for truthfully and completely describing the facts and circumstances concerning any incident involving the use of force [...]” Further, “Department members will be responsible for articulating the specific facts to explain the member’s own decision to employ a particular use of force and the reasonableness, necessity, and proportionality of the force used.” Had the armbar been the only force used by Officer ██████ he would not have needed to complete a TRR. However, since he also tased ██████ he was required by CPD policy to detail all the force he used. As such, this allegation is Sustained.

**Allegations 1, 2, 4, and 6** against **Officer ██████** and **Allegations 1, 2, 4, and 5** against **Officer ██████** that they: entered Apartment ██████ without justification; detained ██████

without justification; handcuffed ██████████ without justification; and arrested ██████████ without justification, are all **Exonerated**.

With regards to entering the apartment without justification, the officers did not have a warrant or permission but they had exigent circumstances. Exigent circumstances justify a warrantless entry where police officers “reasonably fear for the safety of someone inside the premises” and taking the time to secure a warrant would be impractical.<sup>33</sup> Based on a 911 call, conversations with neighbors, and visible injury to ██████████ the officers had probable cause to believe she was in immediate danger of further violence. *People v. Foskey* lists some non-exhaustive factors to consider when determining if exigent circumstances exist. Those factors include (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense is involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and, (8) whether the police entry, though nonconsensual, was made peaceably.<sup>34</sup> The 911 call confirmed the incident was recent. The officers did not delay time in which they could have gotten a warrant. They officers had reason to believe violence was occurring inside the apartment, although there was no reason to believe ██████████ was armed. The officers had probable cause to believe ██████████ was being battered, as detailed above. Had the officers delayed, ██████████ could have escaped from the apartment. Lastly, the officers entered peaceably, without injury to ██████████ and maintained professionalism. Because of the exigent circumstances present, Allegation 1 against both officers is Exonerated. The officers had probable cause to detain and handcuff ██████████ once inside the apartment for the same reasons they had to enter the dwelling: the 911 call, conversations with neighbors, and visible injury to ██████████. The officers attempted a detention and investigation with ██████████ but he resisted. At that point, ██████████ was in violation of Illinois state law, in that he was resisting or obstructing a peace officer [...]” and his arrest was valid. As such, these three allegations are **Exonerated** against both officers.

## VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

### a. Officer ██████████

#### i. Complimentary and Disciplinary History

Officer ██████████ has received two (2) problem solving awards, one (1) special commendation, one (1) superintendent honorable mentions, three (3) department commendations, seventy-six (76) honorable mentions, one (1) honorable mention ribbon award and one (1) joint operations award. Officer ██████████ has no notable disciplinary history.

#### ii. Recommended Penalty, by Allegation

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<sup>33</sup> *United States v. Collins*, 110 F. App'x 701, 703 (7th Cir. 2004), quoting *United States v. Jenkins*, 329 F.3d 579, 581 (7th Cir. 2003).

<sup>34</sup> *People v. Foskey*, 136 Ill. 2d 66, 143 Ill. Dec. 257, 554 N.E.2d 192 (1990).

1. **Allegation No. 5:** Tased ██████████ Jr. without justification.
2. **Allegation No. 7:** Failed to specify the details regarding the use of arm bar(s) on ██████████ in your Tactical Response Report (TRR).

Officer ██████████ admitted to making the mistake when filling out the TRR. He should have included the arm bar, but there is no indication the mistake was made maliciously. In regard to using his taser, ██████████ at points was an active resister. There are moments in the interaction where the use of a taser may have been justified. However, as pointed out, the officer is responsible for reducing the force level based on the subject’s actions. At the time of the tasing, ██████████ was not an active resistor. Given the seriousness and danger that can occur with deploying a taser, COPA recommends a 5 day suspension.

**IX. CONCLUSION**

Based on the analysis set forth above, COPA makes the following findings:

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer ██████████	1. Entered Apartment #2 without justification, in violation of Rule 2 and Rule 6. 2. Detained ██████████ without justification, in violation of Rule 2 and Rule 6. 3. Prevented ██████████ from complying with your order to put his hands behind his back, in violation of Rule 2 and Rule 11. 4. Handcuffed ██████████ without justification, in violation of Rule 2 and Rule 6. 5. Tased ██████████ without justification, in violation of Rule 6 and Rule 9. 6. Arrested ██████████ without justification, in violation of Rule 2 and Rule 6. 7. Failed to specify the details regarding the use of arm bar(s) on ██████████ in your Tactical Response Report (TRR), in violation of Rule 2 and Rule 6.	Exonerated  Exonerated  Not Sustained  Exonerated  Sustained  Exonerated  Not Sustained
Officer ██████████	1. Entered Apartment #2 without justification, in violation of Rule 2 and Rule 6.	Exonerated

	<p>2. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.</p> <p>3. Prevented [REDACTED] from complying with your order to put his hands behind his back, in violation of Rule 2 and Rule 11.</p> <p>4. Handcuffed [REDACTED] without justification, in violation of Rule 2 and Rule 6.</p> <p>5. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.</p>	<p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p> <p>Exonerated</p>
<p>Lieutenant [REDACTED]</p>	<p>1. Determined the Tactical Response Report (TRR) submitted by Officer [REDACTED] (Star # [REDACTED]) for RD # [REDACTED] was in compliance with Department policy and directives, in violation of Rule 3, Rule 6, and Rule 22.</p>	<p>Not Sustained</p>

Approved:

[REDACTED]

July 2, 2019

\_\_\_\_\_  
 Andrea Kersten  
 Deputy Chief Administrator – Chief Investigator

\_\_\_\_\_  
 Date

**Appendix A**

Assigned Investigative Staff

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<b>Squad#:</b>	[REDACTED]
<b>Investigator:</b>	[REDACTED]
<b>Supervising Investigator:</b>	[REDACTED]
<b>Deputy Chief Administrator:</b>	Andrea Kersten